



30 MAR 2006

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In re Application of:	:	
OSMAN, Saleh, et al.	:	DECISION ON PETITION UNDER
U.S. Application No.: 10/538,624	:	37 CFR 1.47(a)
PCT No.: PCT/IB03/05881	:	
Int'l Filing Date: 10 December 2003	:	
Priority Date: 12 December 2002	:	
Atty Docket No.: PHUS020555	:	
For: PRESERVING LINEARITY OF AN	:	
ISOLATOR-FREE POWER	:	
AMPLIFIER BY DYNAMICALLY	:	
SWITCHING ACTIVE DEVICES	:	

This decision is issued in response to applicants' petition under 37 CFR 1.47(a) filed 09 February 2006. Deposit Account No. 14-1270 will be charged the required \$200 petition fee.

BACKGROUND

On 10 December 2003, applicants filed international application PCT/IB03/05881. The international application claimed a priority date of 12 December 2002 and designated the United States. On 24 June 2004, the International Bureau (IB) communicated a copy of the international application to the United States Patent and Trademark Office (USPTO). The deadline for submission of the basic national fee was thirty months from the priority date, i.e., 12 June 2005.

On 10 June 2005, applicants filed a Transmittal Letter for entry into the national stage in the United States accompanied by, among other materials, payment of the basic national fee.

On 09 December 2005, the United States Designated/Elected Office (DO/EO/US) mailed a Notification Of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905) requiring submission of an oath or declaration in compliance with 37 CFR 1.497 and the surcharge for filing the oath or declaration later than thirty months after the priority date.

On 09 February 2006, applicants filed a response to the Notification Of Missing Requirements which included payment of the required surcharge, a declaration executed by two of the three inventors, and the petition under 37 CFR 1.47(a) considered herein. The petition seeks acceptance of the declaration without the signature of the remaining inventor Saleh OSMAN, whom applicants assert cannot be located after diligent effort.

DISCUSSION

A grantable petition under 37 CFR 1.47(a) must be accompanied by: (1) the fee under 37 CFR 1.17; (2) a statement of the last known address of the nonsigning inventor; (3) an oath or declaration executed by the other inventors on behalf of themselves and the nonsigning inventor; and (4) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort.

Applicants here authorized a charge to Deposit Account No. 14-1270 for required fees, and the petition expressly states the last known address of the nonsigning inventor. Items (1) and (2) are therefore satisfied.

Regarding item (3), section 409.03(a) of the Manual of Patent Examining Practice (MPEP) states that:

An oath or declaration signed by all the available joint inventors with the signature block of the nonsigning inventor(s) left blank may be treated as having been signed by all the joint inventors on behalf of the nonsigning inventor(s), unless otherwise indicated.

Here, applicants have filed declarations executed by two of the three named inventors with an unsigned signature block for the nonsigning inventor, Saleh OSMAN. This declaration may be treated as having been signed by the joint inventors on their own behalf and on behalf of the nonsigning inventor. Item (3) is therefore satisfied.

Regarding item (4), the petition asserts that the nonsigning inventor cannot be reached or located after diligent effort. Section 409.03(d) of the MPEP states the following concerning such cases:

Where inability to find or reach a nonsigning inventor "after diligent effort" is the reason for filing under 37 CFR 1.47, a statement of facts should be submitted that fully describes the exact facts which are relied on to establish that a diligent effort was made.

The fact that a nonsigning inventor is on vacation or out of town and is therefore temporarily unavailable to sign the declaration is not an acceptable reason for filing under 37 CFR 1.47.

Furthermore, the fact that an inventor is hospitalized and/or is not conscious is not an acceptable reason for filing under 37 CFR 1.47. 37 CFR 1.43 may be available under these circumstances. See MPEP § 409.02. Such a petition under 37 CFR 1.47 will be dismissed as inappropriate.

The statement of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein. Statements based on hearsay will not normally be accepted. Copies of documentary evidence such as internet searches, certified mail return receipts, cover letters of instructions, telegrams, that support a finding that the nonsigning inventor could not be found or reached should be made part of the statement. The steps taken to locate the whereabouts of the nonsigning inventor should be included statement of facts. It is important that the statement contain facts as opposed to conclusions.

Here, applicants have submitted a "Declaration Of Facts Regarding Inventor's Unavailability" executed by Dicran Halajian. The statement refers to attempts to forward the application papers to the nonsigning inventor by email (to his last known email address) and by Federal Express (to his last known address). The statement also refers to attempts to contact the inventor by telephone at his last known telephone number. However, the statement does not make clear whether Dicran Halajian is the person who performed these actions and therefore has the requisite first hand knowledge of such efforts. In addition, no documentation of such efforts is provided (i.e., copies of emails, return receipts and cover letters from the Federal Express package, etc.). Moreover, no evidence is provided to demonstrate that applicants have either confirmed that the inventor still resides at his last known address (for example, by obtaining a signed receipt for the delivery of the application and associated documents) or, if not, that a diligent effort has been made to identify a current address or telephone number for the inventor (i.e., an internet search). Applicants must supplement the present submission with proper firsthand evidence, and documentary support, confirming the efforts discussed in the present submission. Applicants must also submit proper evidence demonstrating that a diligent effort has been made to locate a current address for the nonsigning inventor and, if such an address is identified, that a copy of the complete application papers (with a request for the inventor's signature) has been provided to the inventor at such address. Such diligent efforts should include an internet search, with a copy of the results of such search being provided. On the present record, item (4) is not considered satisfied.

CONCLUSION

Applicants' petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration on the merits of the petition is desired, a proper response must be filed within **TWO (2) MONTHS** of the mail date of the present decision. Any request for reconsideration should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)" and must include the firsthand and documentary evidence required to satisfy item (4) of a grantable petition, as discussed above and in MPEP § 409.03(d).

Failure to file a proper response will result in abandonment of the application. Extensions of time are available under 37 CFR 1.136(a).

Please direct further correspondence with respect to this matter to Mail Stop PCT,
Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents
of the letter marked to the attention of the Office of PCT Legal Administration.



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